

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA M. GIBSON and
J. DAVID GIBSON,

Plaintiffs,

Case No. 08-CV-11266

vs.

HON. GEORGE CARAM STEEH

EQUIFIRST CORP., et al.,

Defendants.

_____ /

ORDER GRANTING DEFENDANTS' MOTION
TO MODIFY DISMISSAL TO STATE "WITH PREJUDICE" [DOC. 13]

On September 15, 2008, this Court entered an order of dismissal based on defendants' motion to dismiss, to which plaintiffs did not file a response. On October 1, 2008, defendants filed the instant motion, seeking to have the order of dismissal modified to state that the dismissal is with prejudice. The plaintiffs themselves filed a letter with the Court, explaining their objection to having their case dismissed with prejudice, and pleading with the Court not to "punish" them for the inaction of their attorney. The Court agreed to treat the letter as plaintiffs' response, and defendants filed a reply brief on November 6, 2008.

The facts of this case are that plaintiffs defaulted on the \$412,250.00 mortgage loan in September 2006. At this point in time, plaintiffs owe over \$100,000.00 in principal, interest and late fees, and have lived rent-free in their home for over two years. During the course of the past two years, plaintiffs twice filed bankruptcy on the eve of sheriff's sales, and avoided foreclosure a third time by filing this litigation. In their response letter, plaintiffs

state that “[i]f you grant the lender their request to have our case dismissed with prejudice, we will not be able to defend ourselves against their next foreclosure attempt.”

While the Court is sympathetic to the plaintiffs’ desire to retain their home, the plaintiffs had a fair opportunity to litigate their case before this Court. The defendants’ remedies ought not to be compromised by any failure of plaintiffs’ counsel to adequately represent them in this litigation, if that is indeed the case. Now, therefore,

IT IS HEREBY ORDERED that defendants’ motion to modify order of dismissal to state “with prejudice” is GRANTED and plaintiffs’ complaint is DISMISSED WITH PREJUDICE.

Dated: November 10, 2008

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
November 10, 2008, by electronic and/or ordinary mail.

s/Josephine Chaffee
Deputy Clerk